

U.S. DEPARTMENT OF LABOR
Employment and Training Administration
Washington, D.C. 20210

REPORT ON STATE LEGISLATION

REPORT NO. 3
July 2013

ARKANSAS

SB 575
(Act No. 956)

ENACTED April 8, 2013
EFFECTIVE July 1, 2013

Administration

Provides that an employer shall report electronically or in any manner authorized by the Department of Workforce Services for inclusion in the State New Hire Registry whenever an employee: (a) is newly hired; or (b) if the individual was previously employed by the employer but has been separated from the previous employment for at least 60 consecutive days, returns to work. An employer shall include in each report, among other things, the name, address, and social security number of the employee and the date the employee began performing services for the employer.

Extensions and Special Programs

Adds criteria that must be met for approval of a shared work plan: (1) that the plan includes an estimate of the number of layoffs that might occur absent participation in the shared work program; and (2) that, if the employer reduces the level of health benefits, retirement benefits, and fringe benefits for its employees who are not in the shared work group, the level of benefits may be reduced by a like amount for the employer's shared work employees.

Modifies the criteria to provide that the plan certifies that the aggregate reduction in work hours is in lieu of all (previously, temporary) layoffs that would have affected at least 10 percent of the employees in the affected group or groups to which the plan applies and that would have resulted in an equivalent reduction in work hours.

Modifies the criteria to provide that (1) the plan shall contain a certification by the employer that the employer has made the proposed plan available to (a) each employee in the affected group for inspection; or (b) if applicable, to the exclusive bargaining representative; and (2) the plan shall include (a) a description of how the plan was made available; and (b) if advance notice of the plan was not feasible, an explanation of why advance notice was not feasible. (Previous law provided that in the absence of any bargaining representative, the plan must contain a certification by the employer that the employer has made the proposed plan, or a summary thereof, available to each employee in the affected group for inspection.)

Modifies the criteria to provide that the plan includes a certified statement by the employer that the terms and implementation of the shared work plan are consistent with any obligations the

employer has under applicable Federal and State laws. (Previous law provided that the plan includes a certified statement by the employer that each employee in the affected group would be eligible for normal unemployment compensation under applicable State law.)

Modifies the criteria to provide that an employee who joins an affected group after the approval of the shared work plan is automatically covered under the previously approved plan, effective the week that the Director, Department of Workforce Services, receives written notice from the shared work employer that the employee has joined. (Previous law provided that any employee who joins an affected group after the approval of the shared work plan is automatically covered under the previously approved plan, effective the week that the Director receives written notice from the shared work employer that the employee has joined and certification that the employee meets the requirements of applicable State law.)

Modifies the criteria to provide that the employer agrees to allow the Director to monitor and evaluate application of the plan after approval. (Previous law provided that the employer agrees after approval to monitor and evaluate application of the plan.)

Provides that an individual is eligible to receive shared work unemployment compensation benefits with respect to any week only if, among other things, during the week the individual is able to work and is available for the normal work week with the shared work employer. Adds that, however, an otherwise eligible individual shall not be denied benefits with respect to any week in which he or she is in training to enhance job skills, including employer-sponsored training and worker training funded under the Arkansas Workforce Investment Act, if the training has been approved by the Director.

Financing

Provides that an employer shall not be granted relief from charges if: (a) an overpayment of benefits is the result of a failure by an employer or the employer's agent to respond timely or adequately to a request for information from the Department; and (b) the employer or the employer's agent has established a pattern of failing to respond to such requests.

Nonmonetary Eligibility

Provides that in cases of discharge for absenteeism, the individual shall be disqualified for misconduct in connection with the work if the discharge was pursuant to the terms of a bona fide written attendance policy with progressive warnings, regardless of whether the policy is a fault or no-fault policy.

Provides that misconduct in connection with the work includes the violation of any behavioral policies of the employer as distinguished from deficiencies in meeting production standards or accomplishing job duties.

Provides that misconduct in connection with the work shall not be found for instances of poor performance unless the employer can prove that the poor performance was intentional.

Provides that an individual's repeated act of commission, omission, or negligence despite progressive discipline constitutes sufficient proof of intentional poor performance.

Provides that an individual who refuses an alternate suitable job rather than being terminated for poor performance shall be considered discharged for misconduct in connection with the work.

Provides that the disqualification for benefits of an individual discharged from his or her last work for misconduct in connection with the work and the disqualifications mentioned in the paragraphs above shall continue until, subsequent to filing a claim, the individual has had at least 30 days of covered employment in Arkansas, another State, or the United States.

Deletes the provisions which provide: Except as otherwise provided in this section, an individual's disqualification for misconduct shall be for 8 weeks of unemployment. However, for a discharge that occurs on or after July 1, 2009, through June 30, 2013, the 8 week disqualification shall continue until, subsequent to filing a claim, he or she has had at least 30 days of employment covered by an unemployment compensation law of Arkansas, another State, or the United States.

Overpayments

Provides that a penalty of 15 percent (previously 10 percent) of the amount of the overpayment at the time the overpayment becomes final shall be assessed on all fraudulent overpayments. The following language has been deleted: However, this penalty shall be waived in the event that the overpayment is repaid within 1 year after the established date.

Provides that if a person has received an amount as benefits to which he or she was not entitled by reasons other than fraud, willful misrepresentation, or willful nondisclosure of facts, the person is liable to repay the amount to the Unemployment Compensation Fund.

Provides that a penalty payment recovered from an overpayment to a claimant shall be deposited into the Unemployment Compensation Fund. (Previously, the penalty payment was deposited into the Department of Workforce Services Special Fund.)

Provides that the Department may issue an overpayment determination contemporaneously with any other determination.

Provides that the deductions of overpayments due to fraud or nonfraud from future benefits may proceed during an appeal of the overpayment determination.

ARKANSAS SB 857 ENACTED and EFFECTIVE April 10, 2013
(Act No. 1040)

Administration

Adds additional subsections to the section concerning ineligibility for extended unemployment benefits for failure to accept or seek suitable work as follows:

(i) The Department of Workforce Services shall enforce this section.

(j) The director shall make quarterly reports to the Legislative Council on the department's efforts to enforce this section, including without limitation:

- (1) The number of cases of benefit recipients accused of not accepting valid job offers;
- (2) The disposition of cases reported under subdivision (j)(1) of this section; and
- (3) The policies and steps the department is taking to eliminate and reduce refusals to accept valid job offers.

(k)(1) The department shall facilitate electronic reporting of a benefit recipient who refuses to take an offered job either through outright refusal, failing a drug test, or other means.

(2) The department may facilitate electronic reporting under subdivision (k)(1) of this section by an easy to understand and use website created for the purpose or created for another purpose that facilitates easy reporting by potential employers and others.

(l)(1) The department shall notify periodically an employer regarding the method for reporting a benefit recipient who fails to take a job either through outright refusal, failing a drug test, or other means.

(2) The department may notify an employer at least 2 times per year regarding the method for reporting under subdivision (l)(1) of this section by electronic means that are economically feasible and may be a part of another communication to the employer.

(m)(1) An employer that provides a report, with the belief that it is true, of a failure to take a job, whether by outright refusal, failure to show up for work or interview, failing a drug test, or other means is not liable for the reporting.

(2) This section provides a complete defense for an employer in a civil proceeding arising from an employer's actions under this section.

HAWAII HB 925
 (Act No. 15)

ENACTED and EFFECTIVE April 16, 2013

Appeals

Provides that written notice of a hearing of an appeal shall be sent by first class, nonregistered, noncertified mail to the claimant's or party's last known address at least 12 days prior to the initial hearing date.

Provides that upon application to, and approval by, the employment security appeals referee's office, a claimant or party to an appeal may elect to receive hearing notices, decisions, and other appeal documents from the referee's office in electronic format in lieu of notice by mail. The date of electronic transmission is equivalent to the mailing date. Electronic notification status

may be rescinded at any time by the referee's office, claimant, or any party upon written notification.

MAINE HB 884
 (CH 175)

ENACTED and EFFECTIVE May 16, 2013

Financing

Provides that no charge may be made to an individual employer but must be made to the General Fund if the claimant was hired by the claimant's last employer to fill a position left open by an individual given a leave of absence for family medical leave provided under Maine or federal law, and the claimant's separation from this employer was because the employer restored the individual to the position at the completion of the leave.

MISSISSIPPI HB 932
 (CH 309)

ENACTED and EFFECTIVE March 6, 2013

Financing

Transfers responsibility for administering the unemployment trust fund and the unemployment compensation fund from the State Treasurer to the Department of Employment Security. The Department shall be subject to the applicable laws pertaining to security of public fund deposits.

Allows the Executive Director, Department of Employment Security, to grant a reasonable extension of time, beyond the statutory due date, within which to file any required unemployment reports, to an employer located in an area included in a declaration of an emergency or disaster by the President or the Governor. The Executive Director may, in his discretion, recognize extensions of time authorized and granted by the Internal Revenue Service for the filing of tax returns.

Provides that notwithstanding the newly subject employer contribution rate, if House Bill (HB) 932 [this bill] becomes effective before March 8, 2013, the contribution rate of all newly subject employers shall be reduced by 0.07 percent for calendar year 2013 only. If this bill becomes effective from and after March 8, 2013, the contribution rate of all newly subject employers shall be reduced by 0.07 percent for calendar year 2014 only. This general experience rate decrease provided for in this paragraph shall be effective for only 1 calendar year. For purposes of this paragraph, "newly subject employers" means employers whose unemployment insurance experience-rating record has been chargeable throughout at least the 12 consecutive calendar months ending on the most recent computation date at the time the contribution rate for a year is determined.

Provides, by adding subparagraph (ii), that the following procedure shall apply for tax years subsequent to December 31, 2009:

(i) Except as otherwise provided in subparagraph (ii), workforce enhancement training contributions shall be collected at a rate of 0.3 percent through December 31, 2010, based upon taxable wages, and at a rate of 0.15 percent thereafter, based upon taxable wages.

(ii) If HB 932 becomes effective before March 8, 2013, the contribution rate to the Workforce Enhancement Training Fund for calendar year 2013 only shall be 0.22 percent. If HB 932 becomes effective from and after March 8, 2013, the contribution rate to the Workforce Enhancement Training Fund for calendar year 2014 shall be 0.22 percent. The contribution rate to the Workforce Enhancement Training Fund provided for in this subparagraph shall be effective for only 1 calendar year.

Provides that, notwithstanding any other provision, an employer shall not be noncharged when the department finds that the employer or the employer's agent of record was at fault for failing to respond timely or adequately to the request of the department for information relating to an unemployment claim that was subsequently determined to be improperly paid, unless the employer or the employer's agent of record shows good cause for having failed to respond timely or adequately to the request of the department for information. "Good cause" means an event that prevents the employer or employer's agent of record from timely responding, and includes a natural disaster, emergency or similar event, or an illness on the part of the employer, the employer's agent of record, or their staff charged with responding to such inquiries when there is no other individual who has the knowledge or ability to respond. Any agency error that resulted in a delay in, or the failure to deliver notice to, the employer or the employer's agent of record shall also be considered good cause.

Provides that, except as otherwise provided in the next paragraph, the general experience rate shall be adjusted by use of the size of fund index factor. This factor may be positive or negative.

Provides that, notwithstanding the minimum rate provisions, if HB 932 becomes effective before March 8, 2013, the general experience rate of all employers shall be reduced by 0.07 percent for calendar year 2013 only. If HB 932 becomes effective from and after March 8, 2013, the general experience rate of all employers shall be reduced by 0.07 percent for calendar year 2014 only. The general experience rate decrease provided for in this paragraph shall be effective for only 1 calendar year.

Includes in the definition of "debtor" any corporation or partnership, and in the definition of "refund" income tax refund due to any corporation or partnership under the "collection through setoff against tax refunds provision."

Provides that the Department, in its discretion, shall have the authority to noncharge an employer account for any benefits paid for unemployment due directly to a presidentially-declared major disaster, but only in those counties and/or areas identified by the disaster area for individual assistance.

Monetary Entitlement

Replaces the terms “benefits” and “unemployment benefits” with the term “re-employment assistance” which means money payments payable to an individual, with respect to his unemployment through no fault of his own.

Provides that the 1-week waiting period shall be waived if the President of the United States declares a major disaster with regard to individual assistance under The Robert T. Stafford Disaster Relief and Emergency Assistance Act.

Nonmonetary Eligibility

Includes in the eligibility conditions to receive benefits that an unemployed individual be actively seeking work.

Overpayments

Provides under both the “penalty provision” and the “collection by warrant provision” that all warrants issued by the Department for the collection of any unemployment tax or for an overpayment of benefits imposed by statute and collected by the department shall be used to levy on salaries, compensation or other monies due the delinquent employer or claimant. No such warrant shall be issued until after the delinquent employer or claimant has exhausted all appeal rights associated with the debt. The warrants shall be served by mail or by delivery by an agent of the department on the person or entity responsible or liable for the payment of the monies due the delinquent employer or claimant. Once served, the employer or other person owing compensation due the delinquent employer or claimant shall pay the monies over to the department in complete or partial satisfaction of the liability. An answer shall be made within 30 days after service of the warrant in the form and manner determined satisfactory by the department. Failure to pay the money over to the department as required shall result in the served party being personally liable for the full amount of the monies owed and the levy and collection process may be issued against the party in the same manner as other debts owed to the Department. Except as otherwise provided, the answer, the amount payable under the warrant, and the obligation of the payor to continue payment shall be governed by the garnishment laws of this State but shall be payable to the Department.

MONTANA

SB 128
(CH 167)

ENACTED April 8, 2013
EFFECTIVE July 1, 2013

Financing

Provides that the account of an employer with an experience rating may not be charged for benefits paid:

- if paid to a worker who terminated services voluntarily with a covered employer without good cause; or
- if paid to a worker who was terminated by the employer for misconduct or gross misconduct.

Provides that the Montana Department of Labor and Industry shall determine a claimant left work with good cause attributable to employment when:

- (i) the claimant had compelling reasons arising from the work environment that caused the claimant to leave and the claimant: (a) attempted to correct the problem in the work environment; and (b) informed the employer of the problem and gave the employer reasonable opportunity to correct the problem;
- (ii) the claimant left work that the Department determines to be unsuitable; or
- (iii) the claimant left work within 30 days of returning to state-approved training.

Provides that the term “compelling reasons” includes but is not limited to:

- (a) undue risk of injury, illness, or physical impairment or reasonably foreseeable risk to the claimant’s morals;
- (b) unreasonable actions by the employer concerning hours, wages, terms of employment, or working conditions;
- (c) a condition underlying a workers’ compensation or occupational disease claim for which liability has been accepted by a workers’ compensation insurer. If the condition is one for which liability has not been accepted by the workers’ compensation insurer, the department shall independently evaluate the condition to determine whether the condition appears to result from the claimant’s employment. If the condition appears to the satisfaction of the department to be related to work, the department shall consider the condition to provide a compelling reason for leaving work; and
- (d) unreasonable rules or discipline by the employer so severe as to constitute harassment.

NEW MEXICO

SB 334
(CH 133)

ENACTED and EFFECTIVE April 3, 2013,
or as indicated

Financing

Requires, effective January 1, 2014, the use of contribution schedule 2 for assigning each employer’s contribution rate from January 1, 2014, through December 31, 2014. Schedule 2 rates range from 0.1 percent to 5.40 percent.

Requires, effective January 1, 2014, the use of one of the following contribution schedules 0 – 6 for each calendar year after 2014, except as otherwise provided, to assign each employer’s rate:

- contribution schedule 0 if the fund equals at least 2.3 percent of the total payrolls (most favorable schedule with rates ranging from 0.03 percent to 5.40 percent);
- contribution schedule 1 if the fund equals less than 2.3 percent but not less than 1.7 percent of the total payrolls; rates range from 0.05 percent to 5.4 percent;
- contribution schedule 2 if the fund equals less than 1.7 percent but not less than 1.3 percent of the total payrolls; rates range from 0.01 percent to 5.4 percent;
- contribution schedule 3 if the fund equals less than 1.3 percent but not less than 1.0 percent of the total payrolls; rates range from 0.6 percent to 5.4 percent;

- contribution schedule 4 if the fund equals less than 1.0 percent but not less than 0.7 percent of the total payrolls; rates range from 0.9 percent to 5.4 percent;
- contribution schedule 5 if the fund equals less than 0.7 percent but not less than 0.3 percent of the total payrolls; rates range from 1.2 percent to 5.4 percent; or
- contribution schedule 6 if the fund equals less than 0.3 percent of the total payrolls; (least favorable schedule with rates ranging from 2.7 percent to 5.40 percent).

Changes, effective January 1, 2015, the formula used for contribution rate determinations from a reserve-ratio formula to a benefit-ratio formula. Repeals the provisions relating to the reserve-ratio formula including all past years of benefits and contributions used, the average 3 years of payrolls used, voluntary contributions, contribution schedules 0 – 6, separate contributing employer accounts and credits, and the 5.4 percent standard contribution rate payable by each employer. Under the benefit-ratio formula, provides that for each calendar year, if, as of the computation date (June 30), an employer has been a contributing employer throughout the preceding 24 months, the contribution rate shall be determined by multiplying the employer's benefit ratio by the reserve factor, but shall not be less than 0.33 percent or more than 5.4 percent. The benefit ratio is determined by dividing the employer's benefit charges during the immediately preceding fiscal years, up to a maximum of 3 fiscal years, by the total of the annual payrolls of the same period, calculated to 4 decimal places, disregarding any remaining fraction. If an employer (new employer) has been a contributing employer for less than 24 months, the contribution rate shall be the average of the contribution rates for all contributing employers in the employer's industry, as determined, but shall not be less than 1.0 percent or more than 5.4 percent.

Requires, as a benefit-ratio State, the fund to sustain an adequate reserve, which means that the funds in the fund available for benefits equal the total amount of funds needed to pay between 18 and 24 months of benefits at the average of the 5 highest years of benefits paid in the last 25 years. To sustain an adequate reserve, the division shall determine a reserve factor to be used when calculating an employer's contribution rate by rule promulgated by the Secretary Department of Workforce Solutions. The rules shall set forth a formula that will set the reserve factor in proportion to the difference between the amount of funds available for benefits in the fund as of the computation date, and the adequate reserve, within the following guidelines:

- 1) 1.0000 if, as of the computation date, there is an adequate reserve;
- 2) between 0.5000 and 0.9999 if, as of the computation date, there is greater than an adequate reserve; and
- 3) between 1.0001 and 4.0000 if, as of the computation date, there is less than an adequate reserve.

Provides, under the benefits-ratio formula, that if an employer's contribution rate is calculated to be greater than 5.4 percent, notwithstanding the limitation provided in the law, the employer shall be charged an excess claims premium in addition to the contribution rate applicable to the employer; provided that an employer's excess claims premium shall not exceed 1.0 percent of the employer's annual payroll. Multiply the employer's excess claims rate by the employer's annual payroll to determine the excess claims premium. An employer's excess claims rate shall

be determined by multiplying the difference of the employer's contribution rate, notwithstanding the limitation in the law, less 5.4 percent by 10 percent.

Provides, effective January 1, 2013, that a contributing base-period employer will not be charged for benefits paid for dependent's allowance or voluntarily leaving work to relocate because of a spouse, who is in the military service of the U.S. or New Mexico national guard, receiving permanent change of station orders, activation orders, or unit deployment orders.

Provides, effective January 1, 2013, that in the case of a transfer of an employing enterprise, notwithstanding any other provision of law, the experience history of the transferred enterprise shall be transferred from the predecessor employer to the successor:

- if, at the time of a transfer of an employing enterprise in whole or in part, both the predecessor and the successor are under common ownership, then the experience history attributable to the transferred business shall also be transferred to and combined with the experience history attributable to the successor employer. The rates of both employers shall be recalculated and made effective immediately upon the date of the transfer.
- whenever a person not currently an employer acquires the trade or business of an employing enterprise, the experience history shall not be transferred to the successor if the successor acquired the business solely or primarily for the purpose of obtaining a lower rate of contributions; instead, an applicable new rate shall be assigned.
- if, following a transfer of experience history, it is determined that a substantial purpose of the transfer of the employing enterprise was to obtain a reduced liability for contributions, then the experience rating accounts of the employers involved shall be combined into a single account and a single rate assigned to the combined account.
- a person who knowingly violates or attempts to violate these rules to obtain a reduced liability of contributions is guilty of a misdemeanor and shall be punished by a fine not less than \$1,500, or more than \$3,000, or, if an individual, by imprisonment for a definite term not to exceed 90 days or both. In addition, an employer will be subject to a civil penalty of the highest contribution rate as determined, and for a person not an employer the civil penalty shall not exceed \$3,000.

NORTH DAKOTA

**HB 1111
(CH 392)**

ENACTED and EFFECTIVE March 26, 2013

Financing

Prohibits the noncharging of benefits paid to an individual against the accounts of base-period employers if benefit payments are financed under a reimbursable method.

Prohibits the noncharging of benefits paid to an individual against the accounts of base-period employers if an overpayment of unemployment compensation benefits results from:

- 1) The employer, or the agent of the employer, failing to respond timely or adequately to the request from the bureau for information relating to a claim for unemployment compensation; and

- 2) The employer, or agent of the employer, has established a demonstrated pattern of failing to respond to such requests.

The above overpayment language applies to overpayments established after October 21, 2013.

NORTH DAKOTA SB 2111 ENACTED and EFFECTIVE March 21, 2013
(CH 394)

Financing

Requires deposit of the 15 percent penalty on the amount of overpaid benefits into the State unemployment compensation fund.

Overpayments

Provides that an individual who has made a false statement to obtain unemployment compensation to which not lawfully entitled shall be assessed a monetary penalty of 15 percent of the amount of fraudulent benefits overpaid. The penalty must be applied to all forms of State and federal unemployment compensation.

NORTH DAKOTA SB 2016 ENACTED and EFFECTIVE April 29, 2013
(CH 47)

Financing

Appropriates \$12,407,000 of Reed Act monies for the purpose of developing a modernized unemployment insurance computer system for the period beginning July 1, 2013, and ending June 30, 2015.

TEXAS SB 1537 ENACTED May 18, 2013
(CH 119) EFFECTIVE October 1, 2013

Financing

Provides that if a reimbursing employer pays a reimbursement to the Texas Workforce Commission for benefits paid to a claimant that are not in accordance with the final determination or decision, the employer is not entitled to a refund of, or credit for, the amount paid by the employer to the Commission unless the employer has complied with the following requirements with respect to the claimant:

- A notification provided by a person including an initial response to a notice mailed to the person for whom the claimant last worked, must include sufficient factual information to allow the Commission to make a determination regarding the claimant's entitlement to benefits.

- Notwithstanding the chargeback provisions, benefits paid to a claimant that are not in accordance with the final determination or decision shall be charged to the account of a person if:

(1) the person, or the person's agent, without good cause, fails to provide adequate or timely notification; and

(2) the Commission determines that the person, or the person's agent, has failed to provide timely or adequate notification on at least two prior occasions.

- A notification is not adequate if the notification merely alleges that a claimant is not entitled to benefits without providing sufficient factual information, other than a general statement of the law, to support the allegation.
- Good cause is established only by showing that a person, or the person's agent, was prevented from complying due to compelling circumstances that were beyond the person's control.
- The commission may adopt rules as necessary to implement this requirement.

Except as provided in the next sentence, a chargeback may not be made to an employer's account because of payments having been made under a determination or decision to the claimant for any benefit period with regard to which the claimant is finally denied benefits by a modification or reversal of the determination or decision. A chargeback shall be made to an employer's account for benefits paid to a claimant that are not in accordance with the final determination or decision if the benefits were paid due to the failure of the employer, or the employer's agents, to respond adequately or timely to the notice for claimant information.

The above law changes apply only to a final determination made by the Texas Workforce Commission on or after October 1, 2013, that a person received an erroneous payment.